LIBRARY
SUPREME COURT, U.S.

Supreme Court of the United States

OCTOBER TERM, 1952

No. 9

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, *Appellants*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

Appeal from the United States District Court for the Northern District of Florida

STATEMENT ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES, OF OBJECTION TO MOTION OF F. C. HILLYER, ESQUIRE, FOR LEAVE TO FILE A BRIEF AS AN AMICUS CURIAE.

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Attorneys for Atlantic Coast Line Railroad Company, et al., Appellees.

May 2, 1952.

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 444.

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, as and Constituting the Florida Railroad and Public Utilities Commission, *Appellants*,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

Appeal from the United States District Court for the Northern District of Florida

---

STATEMENT ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., APPELLEES, OF OBJECTION TO MOTION OF F. C. HILLYER, ESQUIRE, FOR LEAVE TO FILE A BRIEF AS AN AMICUS CURIAE.

Come now Atlantic Coast Line Railroad Company and other railroads operating in the State of Florida, appellees, and pursuant to the provisions of Paragraph 9 of Rule 27, as amended, file this statement of objection to the motion of F. C. Hillyer, Esquire, for leave to file a brief in this cause as an *amicus curiae* and of reasons for withholding consent:

I.

The Interstate Commerce Commission's order herein complained of, issued July 25, 1950 under the provisions of Section 13(3) and (4) of the Interstate Commerce Act (U.S.C. Title 49, Section 13(3)(4)), relates to the entire body of Florida intrastate freight rates and charges as a whole, as bearing in the aggregate upon the revenues of the Florida railroads. In conformity with the admonitions of this Court in similar proceedings, *United States* v. *Louisiana*, 290 U.S. 70, *North Carolina* v. *United States*, 325 U.S. 507, the Commission embodied in its report, which is made a part of the order, a saving clause expressly reserving to any shipper or other interested party the right to apply for modification of the findings "as to any specific intrastate rates or charges" (278 I.C.C. 41, 74). Nevertheless, erroneously relying upon the contention that specific rates applicable upon particular commodities are in issue, Mr. Hillyer, movant here, appeared in the court below on behalf of various shippers or receivers of freight, as intervening plaintiffs, filed as many as five separate briefs each relating in terms to the rates specifically applicable upon certain particular commodities or classes of traffic in which such interveners are or may be individually interested, and was heard in oral argument. The court below, overruling movant's contention, found and stated in its opinion that such specific rates applicable upon particular commodities are not in issue (Opinion of court below, pages 11, 17 and 18 of appellant's Statement as to Jurisdiction). Such ruling has not been assigned as error on this appeal. No question relating to such specific rates appears in appellant's Statement of Questions Presented. It is believed that the filing by this movant of an *amicus curiae* brief would impose an added and unnecessary burden upon the Court as well as upon these and other appellees.

II.

Movant failed and neglected to avail himself of his opportunity to petition for appeal to this Court or to join in the appeal which was taken by the Florida Railroad and Public Utilities Commission, plaintiff below and appellant here.

III.

Movant has set forth no valid reasons for belief that all facts and questions of law, relevant to the disposition of this case, will not be adequately presented in support of this appeal by the Florida Railroad and Public Utilities Commission, appellant, acting not only on its own behalf but acting also in the interest of the Florida shipping public as a whole (Paragraph 9(c) of Rule 27).

IV.

Movant erroneously alleges that the railroads represented by the undersigned counsel were not defendants in the court below and are not parties to the case on this appeal. Under and by virtue of Title 28, U.S.C. Section 2323, these railroads seasonably filed their motion for leave to intervene as parties defendant and such intervention was duly allowed by order, dated September 26, 1950, of the Judge of the U. S. District Court, Northern District of Florida.

WHEREFORE, it is submitted that Mr. Hillyer's motion for leave to file a brief as an *amicus curiae* should be denied.

Respectfully submitted,

JAMES A. BISTLINE,
FRANK W. GWATHMEY,
Attorneys for Atlantic Coast Line Railroad Company, et al., Appellees.

May 2, 1952.

Certificate of Service.

I hereby certify that copies of the foregoing statement have this day been mailed by first-class mail, properly addressed, to F. C. Hillyer, Esq., 227 West Forsyth Street, Jacksonville 2, Fla.; Lewis W. Petteway, Esq., General Counsel, Florida Railroad and Public Utilities Commission, Tallahassee, Fla.; Allen Crenshaw, Esq., Assistant Chief Counsel, Interstate Commerce Commission, Washington 25, D. C., and Honorable Philip B. Perlman, Solicitor General of the United States, Department of Justice, Washington 25, D. C.

Dated at Washington, D. C., this 2nd day of May, 1952.

FRANK W. GWATHMEY.